MR. J. E. A. PEREIRA: I propose the following members:—

1. Mr. S. Krishna Iyer,
2. ,, S. Chattanatha Karayalar,
3. ,, K. C. Karunakaran,
4. ,, K. P. Kochukora Tharakan,
5. ,, Kainikara M. Padmanabha Pillai,
6. ,, K. G. Kunjukrishna Pillai,
7. ,, Puthupally S. Krishna Pillai,
8. ,, E. Subramonia Aiyar, and
9. ,, J. E. A. Pereira.

MR. T. C. KESAVA PILLAI: I propose the name of Mr. M. Sivathanu Pillai.

PRESIDENT: The motion before the House is that the names of the honourable members which have been announced should be accepted as members of this new Committee.

The motion was put and carried, and the Bill recommitted to a Select Committee consisting of the following gentlemen:

1. Mr. S. Krishna Iyer,
2. ,, S. Chattanatha Karayalar,
3. ,, K. C. Karunakaran,
4. ,, K. P. Kochukora Tharakan,
5. ,, Kainikara M. Padmanabha Pillai,
6. ,, K. G. Kunjukrishna Pillai,
7. ,, Puthupally S. Krishna Pillai,
8. ,, E. Subramonia Aiyar,
9. ,, M. Sivathanu Pillai, and
10. ,, J. E. A. Pereira.

RULES UNDER THE CIVIL PROCEDURE CODE.

MR. PUTHUPALLI S. KRISHNA PILLAI: This House has now to take up the proposal to amend the rules under the Civil Procedure Code. Last time when this House met the motion was made that the rules as reported by the High Court and published in the Government Gazette be taken into consideration. The motion was adopted but at the request of some members the consideration of that matter was postponed. We have to resume the consideration.

Orders I to III.

PRESIDENT: The question before the House is that in the rules under the Civil Procedure Code Orders 1 to 3—

MR. PUTHUPALLI S. KRISHNA PILLAI: No proposal has been made to alter Orders 1 to 3.

Order IV.

PRESIDENT: That is what I was going to say. The question is that Order 4 Rule 1 do stand part of the Rules.

MR. P. NARAYANA PILLAI (*Mavelikara cum Kunnattur*): I move that in Order IV, Rule 1, delete sub-rule (1). I think that the amendment brought by the Legal Remembrancer is quite un-necessary. This

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[Mr. P. Narayana Pillai.]

amendment is suggested to avoid the delay in the disposal of cases. It is well-known that in the large majority of civil suits the plaintiffs are sure to get a decree and under such circumstances it is wrong to hold that they will intentionally withhold copies of plaints and thereby court unnecessary expenses and hardship to themselves. Moreover, it is also well known that in the majority of cases, copies of plaints are filed along with the suits. But in certain cases where copies are not filed, it may be due to unavoidable circumstances and in that case the parties deserve some concession. There are certain cases in which a number of defendants will have to be impleaded and in such cases it is not possible to prepare all the copies of the plaint within a day or two. The Legal Remembrancer may argue that the parties should prepare those copies sufficiently early. The litigant public are averse to enter into litigation unless they are forced to do so. They may be expecting some sort of settlement between the parties without the intervention of courts which is an expensive method of obtaining relief. Even now there is a provision which says that time may be granted if sufficient ground is shown. Yet the parties will have to put in a petition and an affidavit. In view of the fact that in the large majority of cases copies of plaints are filed along with the plaint, and that it is only under exceptional circumstances that they fail to do so; in such cases, the parties do really deserve some sort of concession. I think this amendment is superfluous and unnecessary.

PRESIDENT: In other words, in cases where there are no copies, Government should undertake to get those copies.

MR. P. NARAYANA PILLAI: Even now there are provisions for filing the copies of plaints and the parties are doing so according to such provisions. The present provision is quite sufficient. No unnecessary compulsion should be exercised on parties in the filing of copies of plaints.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: Under Section 24 of the Civil Procedure Code, every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. In view of this power amendments have been made by the several British Indian High Courts to Order IV for Rule 1 as it is enacted in the Civil Procedure Code. Our provision corresponds to the British Indian Order IV Rule 1. This proposal has been made by the High Court because it is their experience that the intentions underlying the provisions relating to concise statements are not duly complied with and such practice results in the miscarriage of justice. There is a concession given to the parties to file concise statements. Generally, these concise statements do not contain the important point contained in the plaint and it misleads the opposite party. That causes delay in the disposal of cases. On the strength of these mistakes and more generally on the inadequacy of the details contained, parties apply for time and do get a large number of adjournments for filing written statements. This can be avoided by

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directing the parties to file copies of plaints at the time the suit is instituted. It is therefore proposed that every suit shall be instituted by presenting a plaint together with true copies of such plaint. As was said by the honourable member ordinarily that is being done. It is therefore not a new rule that is proposed. If that is so, I cannot understand why the member should say that this must be omitted. If the Court sees sufficient reasons to grant time it can do so. Then the copies may be filed on the date to which the Court adjourns it. The duty is imposed on the litigant public to file copies of the plaint along with the plaint filed in Court. This is the rule which prevails in Alahabad, in Oudh and in Lahore.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know what the rule is in Madras? This is not adopted there. May I know the reason for that?

MR. PUTHUPALLI S. KRISHNA PILLAI: Probably this is under their consideration now or probably the time has not come for taking that question. I am not in a position to say.

PRESIDENT: In Madras the rule so far as the original side of the High Court work is concerned is that the lawyer of the Plaintiff is responsible for giving a copy. They do not give copies in Court at all. All affidavits, all plaints, and all processes are exchanged between the lawyers. If there is no lawyer the party will give it.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Here also that is the rule. There is a provision to that effect in the Civil Procedure Code. If the opposite party demands copy of the plaint, the vakils who appear for the plaintiffs are bound to give the copy.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, the High Court has suggested that the rule in regard to the filing of concise statement might be changed. This change is proposed because the High Court is fully convinced that such a practice is necessary for the proper administration of justice. Power is also conferred on Courts to grant extension of time and I submit that the power would be quite sufficient for dealing with any case in which hardship might arise.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: Sir, where there is no objection in allowing concise statements to be filed as for example in partition cases where there are two hundred to three hundred defendants sometimes, the concise statement must be allowed to be filed instead of copies.

MR. PUTHUPALLY S. KRISHNA PILLAI: There is very serious objection to this practice. True copies of the plaint might be filed along with the plaint in the case of the partition suit. After all in a partition suit you cannot expect to give a proper concise statement. It is mostly in these cases that there is a likelihood, either innocently or with a design of parties misleading the opposite party. It is in those cases mostly that these irregularities occur. Therefore let me ask what harm there is in doing away with the filing of concise statements

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[Mr. Puthupally S. Krishna Pillai]

and insisting on the true copies of the plaint being filed along with the plaint. That certainly must be acceptable to all parties concerned.

(The question that "in Order IV, Rule I, delete sub-rule (1)" was put to vote and lost.)

MR. P. NARAYANA PILLAI: Sir, I beg to move that

"In Order IV, Rule 1, delete sub-rule (2)".

I think that this amendment is not of any use from the practical point of view. It means strictly payment of Court fees for summons along with the plaint.

MR. PUTHUPALLI S. KRISHNA PILLAI: The present practice of obtaining time for payment of process fee has been severely condemned by all the British Indian High Courts.

PRESIDENT: One of the things that is being practised by people here is that of getting various orders such as the appointment of receivers, orders of injunction, etc., without paying anything by way of Court fees. It is putting a premium not only upon deception of Government but harassing the other party without losing a single pie of one's own money. Such a practice is observed nowhere else in the world. A man goes to the Court and puts in Rs. 5 in respect of a Rs. 100 leviable as Court fee and gets various interim orders and harass the other side sufficiently and the suit is kept in cold-storage until it goes on for seven or eight years. It is one of the things that is rather humiliating to the outsiders' ideas of Travancore justice. I trust that honourable members would set their faces sternly and see that a public opinion is created that the dispensation of justice may be one of the watchwords in Travancore.

MR. P. NARAYANA PILLAI: According to this amendment the payment of cost is to be strictly enforced. In order that this amendment might become useful the payment of court fees chargeable on the plaint must also be insisted to be levied. Now according to the rules of the payment of court fees it is not necessary to pay the full amount of fee chargeable on the plaint at the time of the filing of the suit while the payment of process fee is insisted upon.

PRESIDENT: Order, order. When the Court Fees Act insists on the payment of the fee chargeable what is the reason for not paying the full amount and why is it that the full amount is not demanded? I want to know the reason from the honourable Legal Remembrancer.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, a bad practice has grown up and it has been growing up ever since the days of the economic depression. The Courts have been showing consideration and this has been taken undue advantage of by people. It has come to the notice of both the Government and the High Court that the privileges given to the plaintiffs are being misused to such an extent that the High Court have now made up their mind to take stern steps against this practice.

LIBRARY ARCHIVES Kerala Legislative Assembly

PRESIDENT : I take it that it is a misconduct on the part of every legal functionary to accept plaints without the full Court fee.

MR. PUTHUPALLI S. KRISHNA PILLAI : Sir, that is the rule in British India. But here a few years ago the matter was considered by the High Court and a decision was reported.

PRESIDENT : I take it that the Legal Remembrancer will try to introduce a Bill for this purpose if a Bill is found necessary.

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes Sir.

MR. P. NARAYANA PILLAI : Sir, I do not wish to press the amendment.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI : Is there not a provision in the existing Civil Procedure Code allowing a grant of time ?

MR. PUTHUPALLI S. KRISHNA PILLAI : Under the Civil Court Guide when the document is filed before the Head Ministerial Officer if it has affixed to it some stamp, though not the requisite stamp he is bound to post it to a specific date for curing the defect. When the document is presented he is bound to admit it and when it is admitted it is to be judicially disposed of. Then comes the provision contained in the Civil Court Procedure and the courts are moved for granting further time. Though the British Indian Courts also have the power, it does not appear that the same is exercised on such a large scale. It is the present practice here to treat it as a matter between the court and party filing the document in Court.

PRESIDENT : That does not mean the harassing of the debtor without the creditor paying any money.

MR. PUTHUPALLI S. KRISHNA PILLAI : Yes, Sir. It does in practice. Our Courts are indulgent in this matter. It so happens that by manipulation the creditor is able to keep the process pending in the court for an unconscionably long time. Then it is dismissed or got dismissed for default of appearance. When it is restored to the file on motion made for the purpose the opposite party is not given notice. It seems to be a matter between the party and the Court. It is not the intention of the judiciary to be over indulgent in this respect in the future.

MR. P. NARAYANA PILLAI : I do not move this but section 130 of the Civil Procedure Code specifically gives powers to the Courts to grant time.

PRESIDENT : Generally the power of the Court to grant time is used, as honourable members who practice the legal profession will know, in cases in which it is difficult to find out what the exact court fee is It may be that the fee payable is more on account of the real nature of the suit or that it may be two or three types of fee may be leviable from which an alternative has to be chosen. Where there are those difficulties or where a *bona fide* mistake arises as in the case of the mistake of a clerk fixing a Court fee deposit of Rs. 500 instead of Rs. 550, time may be granted.

LIBRARY ARCHIVES Kerala Legislative Assembly

[President.]

One of the first things one notices when dealing with the question of Travancore judicial administration is the intolerable delay in the subordinate Courts relating to the disposal of cases. People seem to imagine that three, four or five years is a matter of course. With my practice extending over 37 years and extending to several tribunals all over India, I have never known the biggest original suit, say in Madras or Bombay, take more than two or three years at the most. The duration of trials here is also exceptional. One of the biggest cases that I have ever conducted on the original side of the Madras Court extended over a month. This was the Besant trial. And that was considered very protracted. In the mofussil larger time is taken but even there there is nothing like what happens here. Here one hears of argument going on for six months and examination and cross-examination go on for years. People must set their faces against this state of things What is the use of attempting to rehabilitate business in Travancore if people will get their money back only after seven or eight years. I trust that this House as the custodian of the reputation of this country and also as deeply interested in the business prosperity of the State will do everything in its power to check all possible dangers that this delay brings in. One of the causes of this delay is this very matter which I would call misplaced leniency. The Courts have fallen into the habit of allowing reliefs, passing orders on petitions and allowing various steps being taken without insisting on the payment even of the requisite Court fee and it appears to me that unless this Legislature steps in and prevents such an abuse of procedure and miscarriage of justice we shall not be able to wipe off that reproach. The professional competence and integrity of our judiciary have been generally acknowledged. But the question of delay has been a reproach and it should be removed and the House will I hope, take every possible step to prevent such delay.

The question that" In Order 4, Rule 1, delete sub-rule 2 was put and lost

MR. JOSEPH VITHAYATHIL; (*Kunnatnad cum Parur*): Sir, I beg to move the following amendment, namely.

> "In order IV. Rule, (2) (a) delete the full stop after the word "appeal" and add the following:
>
> "except a memorandum of appeal of which notice can be issued to the respondent only if the court orders the issue of such notice, in which case the court fee chargeable for the service of notice shall be paid immediately after the Court orders the issue of notice."

According to the amendment proposed by the High Court the word "plaint" in Order IV, Rule 1, (2) (*a*) shall include a memorandum of appeal. The object of my amendment is that in cases of appeals of which notice can be issued to the respondent only if the Court orders the issue of such notice the appellant should not be compelled to pay the process fee before the Court orders the issue of

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notice, in other words, before the appeal is admitted. There is no meaning in asking a party to pay court fee for the service of notice before he gets a right to have such notice issued. It is true that if he pays the process fee and if the appeal is not admitted he can get back the amount. But we know the practical difficulty in getting back amounts deposited in Court. Apart from that, on principle it is not justifiable to compel a party to pay Court fee for a step which may or may not be taken by the court. He cannot be deemed to be defaulter for non-payment of process fee before the court orders the issue of notice. This amendment is necessary in view of the latest amendment of the High Court Act under which an appellant will become entitled to have notice issued to the respondent only if the court permits him to do it, *i, e.*, after the appeal is admitted by the Court.

MR. R. SIVARAMAN NAIR (*Tiruvalla*): I second it.

MR. PUTHUPALLY S. KRISHNA PILLAI: Sir, I oppose the amendment. The amendment is to the effect that in the case of second appeals which come up on the regular file of the court, *i. e.* the High Court, the amendment says that the process fee need be paid only if it is admitted. Now when a party makes up his mind to prefer a second appeal he must be prepared for payment of all the necessary charges for issuing the process in case it is admitted. It should not be supposed that the court is there to decide the matter for him. He must feel some responsibility in the matter and not frivolously file an appeal.

PRESIDENT: Is it common to grant stays in regard to the second appeal?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

MR. JOSEPH VITHAYATHIL: It is only if an appeal is admitted that the court can order the party to remit the process fee.

MR. PUTHUPALLI S. KRISHNA PILLAI: The question of admission is immediately taken up and the question of stay is also considered.

PRESIDENT: What is the usual duration of the time between the preferring of an appeal and its admission into the court?

MR. PUTHUPALLI S. KRISHNA PILLAI: Nothing definite can be said about that, Sir. Usually it takes about a month. But what the High Court propose is that it should be made obligatory on the party preferring the appeal to make up his mind on the matter and to remit into the court all kinds of fees along with the memorandum of appeal. In other words, the process fee should also be remitted along with the filing of the appeal memorandum. Sir, the admission of an appeal is not a simple matter; a Judge has to sit and hear arguments, sometimes very lengthy arguments. It takes even two or three hours, arguments in some cases before an appeal is admitted. If after admission the party does not pay the process fee, the appeal will be dismissed. This results in large waste of public time and money. In the case of the second appeal in which the payment of the process fee is a serious consideration for the party preferring the appeal we can conclude safely

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. Puthupalli S. Krishna Pillai].

that the appeal is a frivolous one. If as a matter of fact there is a presentable case and an arguable question of fact or of law, it does not appear to me why the party should not make up his mind to pay the process fee also along with the Court fee and why there should be any delay in the matter. If the appeal is not admitted the parties are entitled to a refund of the unexpended process fee. I therefore oppose the amendment.

MR. JOSEPH VITHAYATHIL : I want to explain my position. The party gets the right to have notice issued to the respondent only after the appeal is admitted, and for that naturally the necessary Court fee has to be paid. Neither the Court nor anybody else suffers by reason of the process fee not being paid in advance. Why should the appellant be made to pay a fee which may not after all be used at all? The case of the Court fee is different; because whether the appeal is admitted or not that has to be paid. But the question of process fee arises only if the appeal is admitted. That being the case, why should the appellant be compelled to pay the process fee along with the Court fee?

MR. N. RAMAKRISHNA PILLAI: May I ask whether unexpended amounts of process fees will not be refunded to the party?

MR. JOSEPH VITHAYATHIL : That is a different matter. Why should the party unnecessarily pay and then ask for a refund?

MR. PUTHUPALLI S. KRISHNA PILLAI: Are not the second appeals ordinarily presented by the advocates engaged for the case?

MR. JOSEPH VITHAYATHIL : Certainly.

MR. PUTHUPALLI S. KRISHNA PILLAI: Is it not the practice for the lawyers to get from the party the necessary process fee also even before they prepare the appeal memorandum and put it into Court?

MR. JOSEPH VITHAYATHIL : Yes; but what right has the court to insist upon the payment of a fee which may turn out to be absolutely unnecessary?

PRESIDENT : The matter is really very simple. The second appeal is, when rightly construed, a luxury because the party has had a fair chance of litigating about his rights and when he is indulging in that luxury he does so because he is convinced that there is justice on his side and that there has been some miscarriage in a matter of law or procedure He does not file the second appeal merely for the fun of doing so. Sometimes it may happen that if he files the second appeal by the mere fact that he has filed a second appeal, he can get good terms by way of a compromise from the opposing party; very often second appeals are filed for that purpose. But ordinarily speaking, if he is convinced of the justice of his case, if it is a case fit for admission, there is little harm in his being made to pay the process fee also along with the Court fee.

It must be remembered that this process of demanding the process fee also; even at the first instance is not for the benefit of either party but for the sake of bringing about economy of judicial time. Two

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Judges should not be hearing a second appeal when it may be that it can be dismissed straightway by one Judge. The provision now sought to be intended has been made for judicial and public convenience. I do not see why any special facility should be given to a party filing a second appeal to gamble upon the question of admission. After all the country is paying the High Court Judges the salary for hearing these appeals. If a particular party is speculative in his activities and wants the luxury of gambling, why should he not pay the process fee also, in the first instance?

MR. PUTHUPALLI S. KRISHNA PILLAI: Further, Sir, as has been pointed out by Mr. Ramakrishna Pillai all unexpended process fee will be refunded.

The amendment was put to vote and lost.

The question that Order IV as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

It was added to the Civil Procedure Code.

Orders V and VI.

The question that Orders V and VI as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The orders were added to the Civil Procedure Code.

Order VII.
Rule 9.

MR. JOSEPH VITHAYATHIL: Sir, I beg to move the following amendment:—

> "In Order VII, Rule 9, for the words "for the comma after the word 'defendants' where it occurs for the first time" substitute the words "for the semi colon after the word "it".

Now, Sir, in view of the amendment it is necessary to make further amendments on this rule. Because according to the previous amendment the copies of plaints to be served on the opposite party ought to be filed along with the plaint. In view of that amendment it is necessary to make amendments in Rule 9 also.

PRESIDENT: I do not think that there is any objection in adopting the amendment now moved by Mr. Vithayathil.

MR. PUTHUPALLI S. KRISHNA PILLAI: I am prepared to accept the amendment, Sir.

The amendment was put to vote and carried.

Rule 20.

MR. JOSEPH VITHAYATHIL: Sir, I beg to move the following amendment:

> "In order VII, Rule 20, for the words "in which" where they occur for the second time, substitute the words "within whose jurisdiction".

Evidently parties do not reside in Courts. The wording of the proposed rule is certainly ambiguous. Hence my amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. PUTHUPALLI S. KRISHNA PILLAI: The difficulty pointed out by the honourable member Mr. Vithayathil arises, I submit, because of a misreading of the provision as it stands. What the High Court thought was that there was no need to repeat the expression "within whose jurisdiction". I submit, that is implied.

I do not think it can reasonably be argued that any person would reside in a court.

PRESIDENT: Certainly, the language is capable of improvement.

MR. PUTHUPALLI S. KRISHNA PILLAI: All the British Indian Acts have adopted the wording accepted by the High Court.

PRESIDENT: But what have you to say to the amendment moved by Mr. Vithayathil.

MR. PUTHUPALLI S. KRISHNA PILLAI: There is no objection to that; but my only submission is that it is unnecessary.

PRESIDENT: Are you willing to accept the amendment?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

The amendment was put to vote and carried.

Rule 22.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I beg to move the following amendment.

Insert the words "or Anchal" after the words "registered posts". Wherever Anchal service is available it is only right that provision should be made for that. The expression 'or Anchal' occurs in various other places in the Code. The present amendment is intended to rectify the omission.

MR. M. GOVINDA PILLAI: I second it.

The amendment was put to vote and carried.

The question that Order VII as amended do form part of the Civil Procedure Code, was put to vote and carried.

The Order was added to the Civil Procedure Code.

Orders VIII to XV.

The question that Orders VIII to XV as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The Orders were added to the Civil Procedure Code.

Order XVI.

MR JOSEPH VITHAYATHIL: Sir, I beg to move the following amendment:—

In Order XVI, Rule 2 (1), delete the full stop after the word "application" and add the following:

And also delete the words "appears to the Court to be" and insert in their place the word "is".

According to the provision as proposed by the High Court the parties have to pay along with the application an amount which appears to the Court to be sufficient to defray the travelling and other expenses of the witness. Now, how is the party to know whether the amount that he remits along with the application will be sufficient or not according to the opinion of the Court? As the amount has to be paid along with

LIBRARY ARCHIVES Kerala Legislative Assembly

the application for summons there is no occasion for the Court to inform the party of the sufficiency or otherwise of the amount, and there is no meaning in asking the party to deposit along with the application an amount which may subsequently appear to the Court to be sufficient. Therefore I suggest that the party should pay such amount as would be sufficient to defray the expenses.

MR. R. SIVARAMAN NAIR: But who is to decide whether the amount so remitted by the party would be sufficient to defray the expenses.

MR. JOSEPH VITHAYATHIL: There are rules relating to that matter.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I have real difficulty in accepting my friend's amendment although I quite appreciate his point. If, as he now proposes, it is provided that a party need pay the amount sufficient to defray the expenses, suppose a party makes up his mind to decide that only third class batta shall be paid to a particular witness: the Court will have no right or power to say that it shall not be third class batta but shall be second class or first class batta in any case and that unless such higher amount is remitted summons would not issue. There must be such power reserved with the Court. That is the reason why the High Court have left the provision as it is.

There is another amendment standing against Mr. R. Sivaraman Nair to omit the proposals of the High Court to amend the present rules.

PRESIDENT: But how is the party to know what the Court will consider as sufficient?

MR. PUTHUPALLI S. KRISHNA PILLAI: There are rules for that purpose already published in the Civil Courts Guide. Those rules say in which cases third class batta have to be given, in which cases second class batta and so on.

PRESIDENT: Would it not be proper to provide something like this—the party shall pay the amount payable under such and such rules the Court having the right to alter or to amend such rules from time to time.

MR. PUTHUPALLI S. KRISHNA PILLAI: That is exactly what is meant by the High Court.

PRESIDENT: It is a matter of wording.

MR. N. NARAYANA KURUP: May I know whether the Courts are not exercising the very same discretion even now?

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, it is on account of that that Mr Sivaraman Nair intends to move for the deletion of the provision.

PRESIDENT: I take it that the objection of Mr. Vithayathil is this. As the provision is worded at present, a person is asked to pay a certain amount as fixed by the Court before the Court has any chance of so fixing it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I agree, Sir, but my point is that the wording suggested by Mr. Vithayathil is not acceptable.

PRESIDENT: My own suggestion is that this is a matter of proper wording of the provision about which the Legal Remembrancer and Mr. Vithayathil can put their heads together and come to an agreement during lunch time. This can be taken up again after lunch.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. JOSEPH VITHAYATHIL : I may make it clear that I do not want to take away the power of the Courts to exercise their discretion in the matter. In fact, even according to my amendment it is the Court's opinion as to the sufficiency of the amount that counts and not that of the party. My only point is that no party should be asked to pay an amount before he could possibly know what exactly the amount is.

MR. PUTHUPALLI S. KRISHNA PILLAI: The amendment as proposed by Mr. Vithayathil is not acceptable as it is likely to lead to this difficulty, *viz.*, who is to decide the sufficiency of the amount ?

PRESIDENT : Is there no other provision for that ?

MR. PUTHUPALLI S. KRISHNA PILLAI : All that the Civil Courts Guide says is third class batta shall be payable in such and such cases, second class in such and such cases and so on. But the question as to whether the amount of process fee paid into the Court is sufficient or not is one that must be left entirely to the Judge ; at any rate, the power must be reserved for the Court to decide that matter.

PRESIDENT : In processual matters, as the honourable member Mr. Vithayathil must be aware, it is not safe to rely on the inherent jurisdiction of Courts ; it is therefore better to put it in clear terms. I would therefore suggest that the matter is taken up after lunch. I shall now proceed to Order XVII.

Orders XVII to XIX.

The question that Orders XVII to XIX as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The Orders were added to the Civil Procedure Code.

Order XX.

Rule 2 (1).

MR. R. SIVARAMAN NAIR : "In order XX, Rule 2, as proposed, insert the words "written by the Judge" after the words "shall be".

Under the old rule the provision was that the judgment shall be written by the Judge in his own hand in the language of the Court or in English. Now, as amended by the High Court all that the rule provides is that the judgement shall be in Malayalam, the language of the Court, or in English ; but there is no obligation that the judgment must be written by the Judge, in other words, that the authorship must be with the Judge. It should not be left to a presiding officer to leave it to his clerk to write out the judgment. It is to make this point clear that I propose the amendment.

PRESIDENT : Does the honourable member object to dictation of judgments ?

MR. R. SIVARAMAN NAIR : No, Sir; but my point is that the authorship of the judgment must be with the presiding officer.

PRESIDENT : Presumably judges exist for that (*laughter*).

MR. R. SIVARAMAN NAIR : But there is no legal obligation on the part of the judge to do that, under the rule as amended by the High Court.

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MR. PUTHUPALLI S. KRISHNA PILLAI: Under the old Civil Procedure Code difference was maintained between those judgments written by Munsiffs and those written by District Judges. Order XX, rule 2, is peculiar to Travancore. It provides that judgment shall be written by the Judge in the language of the Court or in English, in his own handwriting in the case of Munsiffs, whereas, in the case of District Court they need not be in the handwriting of the Judge. In sub-clause 2, provision is made to the effect that in cases where judgment is not written in the handwriting of the Judge, the Judge should sign each page of the judgment and sub-clause 3, provides for the signature of the Judge. So, sub-rules 2 and 3 make it absolutely clear that the authorship shall be with the presiding officer. I submit, therefore, that no alteration is called for.

MR. R. SIVARAMAN NAIR: All that the provision says, Sir, is that the judgment shall be written in Malayalam or in English and signed by the presiding officer. There is absolutely no obligation, so far as I can see that the authorship must be with the presiding officer. It is perfectly possible that a perverse judicial officer may take advantage of the present provision and ask one of his clerks to write his judgment.

PRESIDENT: Assuming that that degree of perversity is possible even if it is provided that all judicial officers shall write all judgments in their own handwriting, there will be nothing to prevent a perverse officer from leaving the authorship of the judgment exclusively to his clerk, himself copying it laboriously (*Laughter*).

MR. R. SIVARAMAN NAIR: I am not suggesting that there is any such judge in Travancore; my only submission is that the law must impose an obligation on the part of the judge in this matter.

The amendment was put to vote and lost.

The question that Order XX as presented to the House do form part of the Civil Procedure Code, was put to vote and carried.

The Order was added to the Civil Procedure Code.

Order XXI.

Rule 6.

MR. JOSEPH VITHAYATHIL:

"In Order XXI, Rule 6, substitute the word "rules" for the word "rule" where it occurs for the first time.'.

MR. PUTHUPALLI S. KRISHNA PILLAI: That is a printer's mistake; I accept the correction.

The amendment was put to vote and carried.

Rule 14.

MR. JOSEPH VITHAYATHIL:

"In Order XXI, Rule 14, delete the full stop after the word "executes" and add the following:

"it or, if execution has not been begun to the Court which has jurisdiction to execute it".

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I move for the addition of the word " it "after the word " executes" in order to correct a mistake apparently made by the printer. Now the real object of the amendment proposed by the High Court is to allow the execution Court, to recognise the assignment of decrees and to execute such decrees. But if execution is not already begun, then also, according to my amendment, the application for recognising the assignment and executing the decree should be made to the Court which has jurisdiction to execute the decree. If execution is begun, the Court which executes the decree can recognise the assignment and proceed with the execution. If execution is not already begun the Court which has jurisdiction to execute the decree can recognise the assignment and execute the decree. It is therefore better to give that power to the execution court even if execution is not already begun. The application may be filed in the court which has jurisdiction to execute the decree. That is the object of my amendment.

MR. N. RAMAKRISHNA PILLAI: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I oppose the amendment. There is another amendment lower down to the effect that assignment shall be recognisable by the court which passed the decree or by the court to which it is transferred for execution. That is the provision which the High Court want to bring into effect. There is no doubt that there is some difficulty in the proposal now made, as it stands ; and it has to be amended. But for that, I am prepared to accept amendment No. 12. That is the rule in most of the British Indian Courts. My friend's present amendment is misleading.

PRESIDENT: It is safer to adopt the wording adopted elsewhere.

MR. PUTHUPALLI S. KRISHNA PILLAI: Yes, Sir.

The House adjourned for lunch at 1 p. m. and reassembled at 2 p. m.

MR. JOSEPH VITHAYATHIL: Sir, with regard to Order XVI Rule 2 (1), in addition to the amendment suggested by me, I may be permited to move a further amendment. That is, in Order XVI, Rule 2 (1) add the following as a proviso :—

"Provided the court may direct payment of any further sum within such time as the court deems fit to fix."

That solves the difficulty suggested by the learned Legal Remembrancer.

MR. N. RAMAKRISHNA PILLAI: I support the amendment of Mr. Vithayathil. Order XVI, Rule 2 (1) provides for the payment of the batta and travelling expenses to witnesses along with the application. The object of the rule is to emphasise that the money should be paid along with the application. Emphasis is laid on the date of the application. The prevailing practice is that the application is made and the batta is allowed to be paid at any time before orders are passed. To avoid delay in payment of batta the rule provides that the paymen

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should be along with the application. But the court has to decide as to the class to which a witness belongs so that the batta may be fixed accordingly. Of course, the party has also the discretion to fix the class to which the witness belongs. The discretion of the court may be exercised at the time of granting the application or at the time of the examination of the witness, so that it is not correct to say that the amount of the batta is finally fixed at the time of filing the application. The batta may be paid provisionally and final orders may be passed at the time of the examination of the witness. All that the rule proposes is to compel a party to make the payment, whatever it is, along with the application, leaving it to the discretion of the court to fix the batta subsequently. The payment is insisted upon at the time the application is filed.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, the motion tabled by Mr. Vithayathil is to substitute the word "is" for the words "appears to the court to be". I am prepared to accept it. But, as I pointed out, there must be a provision for enabling the court to deal in cases in which in the opinion of the court sufficient batta has not been paid. It was only that difficulty that confronted me when the motion was discussed. Without the proviso now proposed by Mr. Vithayathil it will appear that a party may contend that he has paid sufficient batta and under the rules it may be sufficient, but the court may say "Pay in some additional sum as batta". This proviso only enables the court to exercise that power whenever it finds that sufficient batta has not been paid and this vests jurisdiction in a court to determine finally what is sufficient for the issue of the batta. Such cases may be very rare, but we have to provide for such cases also. If in exceptional cases it appears to the court that sufficient money has not been paid the power must vest in the court to decide the sum to be further paid. This is only by way of abundant caution. Sir, I agree to the proviso proposed to the amendment by Mr. Joseph Vithayathil.

The amendment proposed by Mr. Vithayathil as finally settled was put to vote and declared carried.

MR. R. SIVARAMAN NAIR: In Order XXI, Rule 14, as proposed, omit the words "executes it" and insert in their place "passed it or to any Court to which it has been sent for execution".

The Rule under the Civil Procedure Code of 1100 is that the transferee may apply for the execution of the decree to the court which passed it. But now under the suggested Rule a transferee can apply to the court which executes it and if the decree is not being executed there is no provision as to where an application for execution should be made. It is to remedy that defect this amendment is moved, so that if the decree is being executed the application may be filed in that court and if it is not being executed, it may be filed in the court which has passed the decree.

MR. P. SIVARAMA PILLAI: I second it.

MR. PUTHUPALLI S. KRISHNA PILLAI: I have no objection to adopt the amendment.

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The amendment was put to vote and declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: In Order XXI Rule 20 delete the words "as in Allahabad and other Courts."

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The amendment was put to the vote of the House and was declared carried.

MR. JOSEPH VITHAYATHIL: In Order XXI, Rule 44 A, line 4, for the words "not in the possession of the judgment-debtor" substitute the words "belonging to him but not in his possession". This is only a formal amendment. As the Rule stands at present, it applies to any movable property not in the possession of the judgment-debtor whether it belongs to him or not. That will certainly be an absurdity. It is better to make the position clear.

MR. PUTHUPALLI S. KRISHNA PILLAI: I would make the suggestion that the words "in which he has an interest but which is not in his possession" may be substituted for the proposed amendment of Mr. Vithayathil and if it is acceptable to him I am prepared to accept the amendment.

MR. JOSEPH VITHAYATHIL: I agree.

The amendment that the words "in which he has an interest but which is not in his possession" be substituted for the words "not in the possession of the judgment-debtor" was put to vote and declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: In Order XXI, Rule 44 E, delete the word "in" appearing in the expression "as in hereinbefore provided". It is only a printing mistake.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The amendment was put to vote and declared carried.

MR. PUTHUPALLI S. KRISHNA PILLAI: In Rule 44 F after the words "by the garnishee whether," insert the following namely, "on a notice under Rule 44 A or". The present rule contemplates only one case and the amendment is to make it more comprehensive. I find that this is due to an omission.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The amendment was put to vote and declared carried.

MR. JOSEPH VITHAYATHIL: Sir, I move:

"In Order XXI, Rule 55, after the word "rule" add the words "deleting the full stop" and omit the words "on the dismissal of the application, the attachment shall cease."

It is only a duplication of the existing provision in the rule. Hence my amendment.

MR. PUTHUPALLI S. KRISHNA PILLAI: The High Court wanted to retain the last words of the existing provision, *viz.*, "unless the court expressly directs that it shall continue in force." Therefore it is enough if those words alone are added to the existing clause.

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PRESIDENT: The question before the House is that in Order XXI Rule 55, after the word "Rule" add the words "deleting the full stop" and omit the words "on the dismissal of the application the attachment shall cease." It was put and carried. It was added to the Bill.

MR. PUTHUPALLY S. KRISHNA PILLAI: I move

"In Order XXI, Rule 67 (2), omit the word "also" occurring in the expression "provided also."

There is only one proviso to that clause and it is purely a clerical error.

PRESIDENT: The question before the House is that Order XXI as amended form part of the Rule.

The motion was put and carried.

The question that Order XXII to XXXI form part of the Rule was put and carried.

The question that Order XXXII to XXXIX form part of the Rule was put and carried.

Order XL.

MR. PUTHUPALLY S. KRISHNA PILLAI: I am not pressing my amendment. But I may say that except in the wording of the last portion, no change is necessary. The portion referred to reads thus:

"In cases where a judgment is not written by the Judge in his own hand, each page of the judgment shall be signed by him."

I have reproduced Order XX, Rule 2, which ought to form part of the Bill. This is only a formal amendment.

ORDERS XLI TO XLVI AND SCHEDULE.

The question that Order XL as amended stands part of the Bill was put and carried.

The question that Order XLI to XLVI and the Schedules etc., form part of the Bill was put and carried.

MR. PUTHUPALLY S. KRISHNA PILLAI: I move that the Civil Procedure Code (Amendment) Bill be passed.

KHAN BAHADUR G. S. ABDUL KARIM: I second it.

The question before the House is that the Civil Procedure Code (Amendment) Bill be passed.

The motion was put and carried.

THE TRAVANCORE RUBBER CONTROL BILL.

MR. PUTHUPALLI S. KRISHNA PILLAI: Sir, I rise to introduce the Travancore Rubber Control Bill. I may be permitted to briefly explain the principles underlying this Bill and the object with which it is now proposed to be introduced. The existing Rubber Control Act has been extended for a further period of 5 years by virtue of the power conferred on Government under Section 1 of the Act. Sometime before the operation of the Act was extended, the Government of India had entered into a further agreement with the International Rubber Regulation Committee under which an important privilege was acquired for all the rubber producing countries. Under the existing Act, rubber cultivation is restricted and it is permitted only for experimental purposes. As a result of the International Agreement, this restriction has

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